United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

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75-7536

UNITED STATES COURT OF APPEALS
For the Second Circuit

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P/S

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

Plaintiff-Appellee,

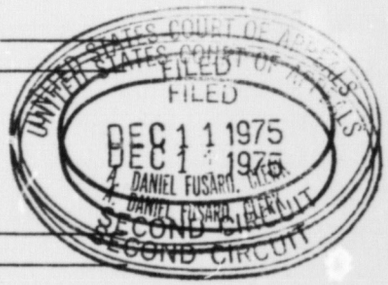
against

OVERSEAS NATIONAL AIRWAYS

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of New York

REPLY BRIEF OF DEFENDANT-APPELLANT



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3

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Preliminary Statement

Defendant-Appellant Overseas National Airways ("ONA") respectfully submits this Brief in reply to the arguments made by Plaintiff-Appellee Air Line Pilots Association, International ("ALPA"), in their Brief on Appeal.

ARGUMENT

POINT I

THE DISPUTE IN THE PRESENT CASE IS A "MINOR" DISPUTE

ALPA's argument that the dispute herein is a "major" dispute, requiring the issuance of injunctive relief to preserve the alleged "status quo" is contrary to the specific fact findings of the District Court and is not supported by the record.

A. The Negotiations and the Proceedings Before the National Mediation Board

ALPA claims that the fact that the parties negotiated ONA's proposal to change the language of Section 31.L. and later submitted the proposal, along with various other matters concerning the renegotiation of the entire collective bargaining agreement, to the National Mediation Board, means that ONA regarded the dispute which is the subject matter of this lawsuit as a "major" dispute involving a change of the existing collective bargaining agreement and working conditions. (ALPA Brief at 25-31). The facts, however, are entirely different. It is clear

from the record that ONA has consistently taken the position that it has the right, under the existing collective bargaining agreement, to designate the location where reserve pilots are to perform their reserve duty. Thus, in 1973, ONA stated to the chairman of ALPA's pilot unit in no uncertain terms that:

> "[T]he Company will indicate on the reserve line where the reserve duty will be performed: At the domicile or at any other designated area where the Company may have an expectation to need the pilot" (57A)*

The fact that ONA later sought to negotiate a language change in Section 31.L. does not constitute a waiver of ONA's rights under the existing contract. Furthermore, the fact that ONA and ALPA have submitted a dispute to mediation regarding an entirely new collective bargaining agreement does not divest the Adjustment Board of jurisdiction to decide disputes regarding the interpretation of the terms of the existing agreement.

In light of these facts, ALPA's reliance on United Transportation Union v. Illinois Terminal R.R.Co., 471 F.2d 375 (7th Cir. 1972), is totally misplaced. In that case it was clear that both sides in fact treated the dispute as being "major". As Judge Stevens, in his concurring opinion stated, "the controlling consideration is the fact that neither party makes a substantial claim that its position is justified by the existing contract." (471 F.2d at 380).

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*Unless otherwise stated, all emphasis has been supplied.

The same court, in United Transportation Union v. Baker, 499 F.2d 727, 731 (7th Cir.), cert. denied, 419 U.S. 839 (1974), relied on Judge Stevens' opinion in distinguishing the Illinois Terminal R.R.Co. case:

> "The concurring opinion found a major dispute due to the fact that the railroad's actions were admittedly outside the coverage of the contract, that is, neither the railroad nor the union could make a substantial claim that its position was justified by the existing contract. 471 F.2d at 380. The contract was silent. The instant situation is quite to the contrary. The contract is not silent with respect to crew boards. Section 8-B-1 is an express provision. Likewise, as previously demonstrated, it cannot be said that the railroad does not make a substantial claim that its position is justified by the existing contract. Accordingly, we are not constrained by our decision in United Transp.U., Lodge No. 621 v. Illinois Terminal R. Co."

Unlike the situation in Illinois Terminal R.R. Co., ONA has never treated the dispute over the 24 hour rule as a "major" dispute, and has always asserted that it has the right, under the existing contract, to designate the location where on duty reserve pilots were to perform their reserve duty. Furthermore, the District Court expressly found that ONA's position was not insubstantial; a finding which is clearly supported by the record. Thus, the fact that the parties invoked mediation to help negotiate a new contract is completely irrelevant in the present lawsuit.

B. Pilot Bulletin 35-75 Did Not Change the Applicable Working Conditions

ALPA argues that, despite the undisputed evidence that on-duty reserve pilots have consistently accepted specific

flights on less than 24 hours' notice, Pilot Bulletin 35-75 constitutes a change in working conditions (ALPA Brief at 31-37). To support this specious contention, ALPA claims that the reserve pilots took these flights only to accomodate ONA (Ibid. at 34-36). The record shows that this is not true.

There was undisputed testimony at the hearing in the District Court to the effect that there were reserve pilots who actually protested against having to take flights on duty days with less than 24 hours notice (242A-244A). When informed by ONA that they were required by the collective bargaining agreement to accept these flights, they did so (Ibid). No grievances were filed (221A-224A; 241A-246A). Thus, far from showing that these flights were taken as an accomodation to ONA, the evidence reveals that the reserve pilots realized that ONA's position regarding 24 hour notification was correct.

There was also undisputed testimony of instances where reserve pilots were directed by ONA to perform their reserve duty at various specified locations (247A). No pilot ever claimed that these directions violated his rights under Section 31.L. (Ibid).

Thus it is clear that even the pilots have recognized that ONA has the right under the existing contract to (a) require reserve pilots to accept specific flights on less than 24 hours notice on days when they are on reserve duty* and (b) to

* The 24 hour rule is satisfied when reserve pilots receive their monthly bid award more than 24 hours before the beginnning of the month (ONA Brief at 4-5).

designate, pursuant to Section 31.I. of the agreement, the location where on-duty reserve pilots are to perform their reserve duty.

Clearly, Pilot Bulletin 35-75 does not change the existing agreement. At the very least, Judge Costantino was correct in holding that ONA's position was not obviously insubstantial, and that the dispute between the parties was therefore a "minor" dispute.

In arguing that the dispute in the present action is a "major" dispute and that the District Court properly issued a preliminary injunction in order to allegedly preserve the status quo, ALPA erroneously relies on Detroit & Toledo Shore Line R. Co. v. United Transportation Union, 396 U.S. 142 (1969). In the Shore Line case the railroad did not claim that its conduct was sanctioned by the existing collective bargaining agreement. In fact, the railroad argued the opposite - that since its conduct was not covered by the agreement, the status quo provisions of the Railway Labor Act were not applicable (396 U.S. at 147-48). Thus, the railroad in Shore Line was, by its conduct, attempting to unilaterally add provisions to the collective bargaining agreement. This position was rejected by the Supreme Court.

In the present case, in contrast to the situation in Shore Line, ONA has claimed it had the right under the collective bargaining agreement to issue Pilot Bulletin 35-75.

Since ONA's position, as the District Court recognized, is not obviously insubstantial, the dispute is one of interpretation of the agreement. Such interpretation is, as ONA has demonstrated in its main Brief, within the exclusive jurisdiction of the Boards of Adjustment.

Although ALPA states that Judge Costantino did not actually interpret the collective bargaining agreement (ALPA Brief at 14), it is clear from the language of the Court's opinion that he did, in fact, do so. Thus, Judge Costantino stated that ONA could not implement its Pilot Bulletin because "ALPA's interpretation [of the 24 hour rule] is more consistent with the other contract language" (384A). Obviously, the District Court issued the preliminary injunction because it agreed with ALPA's interpretation - despite the fact ONA's position was found to be honestly held, and therefore not frivolous.

The District Court, however, did not have the power to accept ALPA's interpretation of Section 31.L. In Piedmont Aviation, Inc. v. Air Line Pilots Association, International, 347 F.Supp. 363, 366 (MD. N.C. 1972), a Railway Labor Act case, the plaintiff requested judicial interpretation of a collective bargaining agreement. The Court, recognizing the limitations placed on its jurisdiction by the Railway Labor Act, rejected the request in the following terms:

> "The Airline ... is asking the Court to accept its own interpretation of the agreement. Since the interpretation of existing collective-bargaining agreements is clearly the function of the System Board of Adjustment, 45 U.S.C. § 184; Slocum v. Delaware, L. & W.R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L.Ed. 795 (1950), and because the dispute which led to the strike and the litigation in this Court arose over the interpretation each party places on the supplemental agreement, it would seem that the System Board of Adjustment should interpret that agreement."

In accepting ALPA's interpretation of the collective bargaining agreement, Judge Costantino clearly exceeded his jurisdiction.

POINT II

THE DISTRICT COURT ABUSED ITS DISCRETION IN ISSUING A PRELIMINARY INJUNCTION

ALPA argues in Point I of its Brief that the preliminary injunction cannot be set aside by this Court absent a showing that Judge Costantino clearly abused his discretion, and that his fact findings were clearly erroneous. As ONA has shown in its main Brief and in Point I of this Reply Brief, the major issue in this appeal is whether the District Court, having found that the dispute herein is a "minor" dispute, had jurisdiction to issue a preliminary injunction, or even to entertain this lawsuit at all. In Brotherhood of Loc. Fire & Eng. v. New York, N.H. & H.R. Co.,

296 F. Supp. 1044, 1048-49 (D. Conn. 1968), the Court explained the issue of jurisdiction over "minor" dispute as follows:

> "It is clear that the present case involves a 'minor dispute' and is subject to the exclusive jurisdiction of the National Railroad Adjustment Board
>
> * * * *
>
> "It is obvious that the court is without jurisdiction. Accordingly, the case is dismissed for want of jurisdiction."

The question of jurisdiction over a minor dispute thus does not involve the discretion of the District Court. The clear lack of jurisdiction in the present case requires reversal of the decision of the District Court and dismissal of the lawsuit.

A. The Issuance of a Preliminary Injunction was an Abuse of Discretion

In any event, ONA has shown in its main Brief that the issuance of a preliminary injunction was, in fact, an abuse of discretion (ONA Brief on Appeal, Point II).

In ONA's Brief, it was pointed out that acceptance of ALPA's position regarding the 24 hour rule would result in the destruction of the reserve system at ONA, and would thereby cause ONA irreparable injury. Any loss to the pilots, on the other hand, would be adequately compensated by a monetary award. This conclusion is further substantiated by the very testimony quoted by ALPA in its Brief. Thus, Captain Marshall testified that the injury to the plaintiffs

resulting from Pilot Bulletin 35-75 would be a "certain inconvenience and in some cases a monetary loss" (110A, quoted in ALPA's Brief at 10). Similarly, the Affidavit of Captain Secola, also quoted by ALPA in its Brief, indicates that the major loss to the pilots would be financial (30A-31A, quoted in ALPA's Brief at 39-40).

Thus, it can be seen from the testimony of ALPA's witnesses that the major damage to the pilots would be monetary, and that even this injury would not occur in all cases. It is clear that, under these circumstances, a damage award would be sufficient, and injunctive relief was unjustified. The District Court thus abused its discretion in granting a preliminary injunction.

B. The Application of the "Clearly Erroneous" Rule

It is important to note that ALPA, in its extensive discussion of the applicability of the "clearly erroneous" rule (Fed.R.Civ.P. 52(a)) to the fact findings of the District Court, failed entirely to mention Judge Costantino's two most crucial findings of fact: that he could not "say with certainty that ALPA's interpretation of Section 31.L. is correct and ONA's is totally incorrect" (382A), and that "each side may honestly hold conflicting interpretations of Section 31.L." (384A). These findings were arrived at, as ALPA points out, after a full evidentiary hearing at which Judge Costantino

had an opportunity to evaluate the credibility of the various witnesses, and are, of course, fully protected by the "clearly erroneous" rule. The findings also make clear that the dispute between the parties is a "minor" dispute, which the District Court lacked jurisdiction to resolve.

CONCLUSION

For all of the reasons stated above, and for the reasons stated in ONA's main Brief, the decision of the District Court should be reversed, the preliminary injunction should be vacated, and the complaint herein should be dismissed for lack of jurisdiction.

Dated: New York, New York
December 11, 1975

Respectfully submitted,

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-against-

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Defendant-Appellant

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

EDNA G. WATROUS being duly sworn, says: I am employed in the office of Breed, Abbott & Morgan, 1 Chase Manhattan Plaza, New York, New York 10005, attorneys for Overseas National Airways, in the above action.

On December 11,1975 I served the annexed

REPLY BRIEF OF DEFENDANT-APPELLANT

by depositing a true copy thereof in a sealed, postpaid envelope at the post office box maintained at 1 Chase Manhattan Plaza, New York, N. Y. 10005, addressed to the following:

Cohen, Weiss and Simon, Esqs., Attorneys for Plaintiff-Appellee, 605 Third Avenue, New York, N.Y. 10016

Sworn to before me this
11th day of December, 1975

Edna G. Watrous

Edna G. Watrous

Donald L. Price

DONALD L. PRICE
NOTARY PUBLIC, State of New York
No. 24-9439300
Qualified in Kings County
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